

DEFAULT DECISIONS

PACKERS AND STOCKYARDS ACT

**In re: ALEXANDER CARR SMITH.
P&S Docket NO. D-00-0011.
Decision and Order filed February 22, 2001.**

Mary K. Hobbie, for Complainant.
Respondent, Pro se.
Decision and Order issued by James W. Hunt, Administrative Law Judge.

P&S - Default - Untimely answer - Inadequate surety bond.

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 *et seq.*) herein referred to as the Act, instituted by a complaint filed by the Administrator, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, charging that the Respondent wilfully violated the Act.

Copies of the complaint and the Rules of Practice Governing Formal Adjudicatory Proceedings (7 C.F.R. §1.130 *et seq.*) under the Act were served upon Respondent by certified mail on September 19, 2000. Respondent was informed in a letter of service that an Answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the complaint.

Respondent has failed to file an Answer within the time prescribed in the Rules of Practice, and the facts alleged in the complaint, which are admitted by Respondent's failure to file an Answer, are adopted and set forth herein as findings of fact.

This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. §1.139).

Findings of Fact

1. Alexander Carr Smith, hereinafter referred to as the Respondent, is a individual doing business in the State of Tennessee, and whose business mailing address is 551 Smith Place Road, Church Hill, Tennessee 37642.
2. Respondent is, and at all times material herein was:
 - (a) Engaged in the business of a market agency buying on commission, and
of a dealer buying and selling livestock in commerce for his own account;

(b) Registered with the Secretary of Agriculture as a market agency to buy livestock on a commission basis, and as a dealer to buy and sell livestock in commerce for his own account.

3. On December 11, 1990, in P&S Docket No. D-90-057 Respondent consented to an Order to cease and desist from engaging in business in any capacity for which bonding is required under the Act and regulations without filing and maintaining a reasonable bond or its equivalent.

4. Respondent was served with a letter of notice on September 17, 1999, informing him that in view of the increased amount of his livestock purchases the \$70,000.00 surety bond he maintained to secure the performance of his livestock obligations under the Act was inadequate, and that it was necessary for him to increase his bond or bond equivalent to \$80,000.00 before continuing his livestock operations subject to the Act.

Notwithstanding such notice, Respondent has continued to engage in the business of a market agency and a dealer without maintaining an adequate bond or its equivalent.

Conclusions

By reason of the facts found in the Finding of Facts herein, Respondent has willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)), and sections 201.29 and 201.30 of the regulations (9 C.F.R. §§ 201.29, 201.30).

Order

Respondent Alexander Carr Smith, his agents and employees, directly or indirectly through any corporate or other device, in connection with his operations subject to the Packers and Stockyards Act, shall cease and desist from engaging in business in any capacity for which bonding is required under the Packers and Stockyards Act, as amended and supplemented, and the regulations without filing and maintaining an adequate bond or its equivalent, as required by the Act and the regulations.

In accordance with section 312(b) of the Act (7 U.S.C. § 213(b)), Respondent is hereby assessed a civil penalty in the amount of one thousand five hundred dollars (\$1,500.00). This Decision shall become final and effective without further proceedings 35 days after the date of service upon the Respondent, unless it is appealed to the Judicial Officer by a party to the proceeding within 30 days pursuant to section 1.145 of the Rules of Practice (7 C.F.R. §1.145).

Copies hereof shall be served upon the parties.

[This Decision and Order became final April 5, 2001. -Editor]